CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 35 MARCH 21, 2001 NO. 12

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 01–22)

CUSTOMS BROKER LICENSE CANCELLATIONS

AGENCY: U.S. Customs Service, Department of the Treasury

I, as Assistant Commissioner, Office of Field Operations, pursuant to Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and the Customs Regulations (19 CFR 111), hereby cancel the following customs broker's licenses based on the authority as annotated:

NAME	PORT	LICENSE NO.	AUTHORITY
DMD International, Inc.	Chicago	17168	19 CFR 111.51(a)
David K. Lindemuth & Co.	San Francisco	06598	19 CFR 111.51(a)

BONNI G. TISCHLER,
Assistant Commissioner,
Office of Field Operations.

(T.D. 01–23)

CUSTOMS BROKER LICENSE REVOCATIONS

AGENCY: U.S. Customs Service, Department of the Treasury

I, as Assistant Commissioner, Office of Field Operations, pursuant to Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and the Customs Regulations (19 CFR 111), hereby revoke the following customs broker's licenses based on the authority as annotated:

NAME	PORT	LICENSE NO.	AUTHORITY
Gilbert International, Inc.	New York	14888	19 CFR 111.45(a)
Flandorffer Associates, Inc.	New York	10351	19 CFR 111.45(a)
Jagro California, Inc.	Los Angeles	13937	19 CFR 111.45(a)

BONNI G. TISCHLER,
Assistant Commissioner,
Office of Field Operations.

U.S. Customs Service

General Notices

MODIFICATION OF NATIONAL CUSTOMS AUTOMATION PROGRAM TEST REGARDING RECONCILIATION

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document announces several changes to the Customs Automated Commercial System (ACS) Reconciliation prototype test. They include a reduction of data required for "no-change" Aggregate Reconciliation entries, a new fee-for-service procedure for requesting reports of flagged entries, a modification of the liquidated damages provision, and a new diskette labeling procedure. In addition, the document discusses the continued use of the midpoint interest calculation for Aggregate Reconciliations. Other aspects of the prototype test not affected by the changes announced in this document remain the same.

DATES: The two year prototype testing period commenced on October 1, 1998, and was extended indefinitely starting October 1, 2000. Applications to participate in the prototype will be accepted throughout the duration of the test. The modification of the test's liquidated damages provision and the new diskette labeling procedure set forth in this document are effective on March 13, 2001. The effective date relative to the test's reduced data requirement for no-change Aggregate Reconciliation entries and the fee-for-service procedure for flagged entry reports will be announced soon after publication of this document via an Automated Broker Interface (ABI) administrative message.

ADDRESSES: Written inquiries regarding participation in the prototype test should be addressed to Mr. John Leonard, Reconciliation Team, U.S. Customs Service, 1300 Pennsylvania Ave. NW, Room 5.2A, Washington, D.C. 20229-0001.

FOR FURTHER INFORMATION CONTACT: Mr. John Leonard at (202) 927-0915 or Ms. Sandra Chilcoat at (202) 927-0032.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Reconciliation, a planned component of the National Customs Automation Program (NCAP), as provided for in Title VI (Subtitle B) of the North American Free Trade Agreement Implementation Act (the NAFTA Implementation Act; Pub. L. 103–182, 107 State. 2057 (December 8, 1993)), is currently being tested by Customs under the Customs Automated Commercial System (ACS) Prototype Test (also referred to as the prototype, test, or prototype test). Customs announced and explained the prototype test in a general notice document published in the **Federal Register** (63 FR 6257) on February 6, 1998, which replaced all previous notices. Clarifications and operational changes were announced in three subsequent **Federal Register** notices published on August 18, 1998 (63 FR 44303), July 21, 1999 (63 FR 39187), and December 29, 1999 (64 FR 73121). A **Federal Register** (65 FR 55326) notice published on September 13, 2000, extended the prototype indefinitely. For application requirements, *see* 63 FR 6257 and 63 FR 44303. Additional information regarding the prototype can be found at http://www.customs.gov/recon.

This document announces additional changes to the prototype. Except for these modifications, all other aspects of the prototype remain the same.

Reconciliation is the process that allows an importer, at the time an entry summary is filed, to identify undeterminable information (other than that affecting admissibility) to Customs and to provide that outstanding information at a later date. The importer identifies the outstanding information by means of an electronic "flag" which is placed on the entry summary at the time the entry summary is filed and payment is made. The kinds of information for which an entry summary may be "flagged" (for the purpose of later reconciliation) are limited and relate to: (1) value issues; (2) classification issues, on a limited basis; (3) "9802 issues," those concerning value aspects of entries filed under heading 9802, Harmonized Tariff Schedule of the United States (HTSUS); and (4) NAFTA issues, those concerning merchandise entered under the North American Free Trade Agreement (NAFTA). The flagged entry summary (the underlying entry summary) is liquidated for all aspects of the entry except those issues that were flagged. The means of providing the outstanding information at a later date is through the filing of a Reconciliation entry. The flagged issues will be liquidated at the time the Reconciliation entry is liquidated. (*See* the February 6, 1998, **Federal Register** notice for a more detailed presentation of the basic Reconciliation process.)

AGGREGATE RECONCILIATION ENTRIES AND REDUCED DATA REQUIREMENTS FOR NO-CHANGE AGGREGATE RECONCILIATION ENTRIES

Aggregate Reconciliations Generally

The **Federal Register** notice published on February 6, 1998, set forth the two kinds of Reconciliation entries: (1) An Aggregate Reconciliation entry (or Aggregate Reconciliation) contains a list of the underlying entry summaries affected and the aggregate revenue adjustment relative to those underlying entry summaries; (2) the Entry-by-Entry Reconciliation entry (or Entry-by-Entry Reconciliation) shows the individual revenue adjustment for each underlying entry summary covered. In addition, that notice set forth that an Aggregate Reconciliation applies only to entry summaries showing either an increase (upward adjustment) or no change in duties, taxes, and fees. An Entry-by-Entry Reconciliation may include entry summaries that show a decrease (downward adjustment) in the amount of duties, taxes, and fees owed.

The **Federal Register** notice published on August 18, 1998, discussed the components of Aggregate Reconciliations (the Header, Association File, and Summarized Line Data Spreadsheet; the same as for Entry-by Entry Reconciliations) and provided that in cases where a Reconciliation entry is filed with no adjustments to value or other reconcilable issues – that is, merely to satisfy the obligation to file a Reconciliation entry after entry summaries had been flagged, the spreadsheet need not be provided. Importers were cautioned to be mindful of the distinction between true "no-change" Reconciliations (no adjustments) and Reconciliations where there are adjustments but no revenue implications. In the latter case, a spreadsheet is required.

The **Federal Register** notice published on July 21, 1999, provided importers the option to report entry summaries with a downward adjustment in duties, taxes, and fees through an Aggregate Reconciliation. These entry summaries must be listed separately from the upward adjusted and no-change entry summaries reported and must be accompanied by a certification that, among other things, waives any claims for refunds relative to these downward adjusted entry summaries.

Current Data Requirement for No-Change Reconciliations

A "no-change Reconciliation" is a Reconciliation entry covering only flagged entry summaries that do not show a change or adjustment at the time of Reconciliation (the filing of the Reconciliation entry). This kind of Reconciliation may be filed using either the Aggregate or Entry-by-Entry method. Which method to use for this specific type of Reconciliation depends entirely on the importer's preference and/or software capabilities. These Reconciliations serve merely to "close out" flags on entries that were later found to require no adjustments at the time of Reconciliation. As noted above, no spreadsheet is re-

quired for this type of Reconciliation. Importers, however, must still provide information regarding the *original* duties, taxes, and fees paid on the underlying entry summaries covered in the Reconciliation when they transmit their Header and Association File via ABI. The Aggregate Reconciliation requires only the aggregate amount of original duties, taxes, and fees paid on the underlying entry summaries covered in the Aggregate Reconciliation entry, while the Entry-by-Entry Reconciliation must show the original amount of duties, taxes, and fees for each individual entry summary covered.

New Reduced Data Requirement for No-Change Aggregate Reconciliations

In order to further simplify the Reconciliation process, Customs will allow importers filing no-change Reconciliations by the Aggregate Reconciliation method to file the Reconciliation entry without the original duty, tax, and fee information. This document announces this modification to the prototype.

These no-change Aggregate Reconciliations, by definition, cannot include entry summaries showing upward or downward adjustments. Importers who wish to take advantage of this option must transmit zeros in the money fields for this type of Reconciliation. Transmission of the Association File is still required. This change will eliminate the redundancy of providing information that has been reported previously to Customs (on the flagged entry summary). It also will eliminate the expenditure of time and effort (by Customs and the trade) required to reconcile instances of disparity between filer (importer or its broker) information and Customs information on no-change Reconciliation entries. Customs believes that this change will greatly improve the prototype.

Customs emphasizes that this reduced data option is available only for no-change Reconciliations filed via the Aggregate Reconciliation method. ACS is not programmed to accept this type of reduced data, no-change Reconciliation via the Entry-by-Entry Reconciliation method. Therefore, no-change Entry-by-Entry Reconciliations must include the original duty, tax, and fee information for each entry summary covered.

The choice to use the Entry-by-Entry or Aggregate method to report no-change Reconciliations remains at the importer's discretion; however, no-change Reconciliations reported via the Aggregate method must be transmitted as described in this document (zeros in the money fields). Customs strongly encourages importers to take advantage of this streamlined method. ACS is expected to be ready to accept the reduced data, no-change Aggregate Reconciliation entries in February 2001. The exact date will be announced via an ABI administrative message.

FEE-FOR-SERVICE PROCEDURE FOR REQUESTING REPORTS OF FLAGGED ENTRIES

The tracking and timely reconciliation of flagged entry summaries is the responsibility of the importer (and filer/broker). To assist the importer in this regard, Customs has been providing importers with reports of their flagged entries upon request. Additionally, Customs has been providing importers with monthly reports of flagged entries coming due during the following month (known as the "Heads-Up Report"). However, due to workload considerations, continued issuance of these flagged entry reports has become unsustainable.

Because Customs believes that a centralized, efficient clearinghouse for providing flagged entry reports is beneficial to both Customs and the Trade, it proposed an Internet-based lookup system in the December 29, 1999, **Federal Register**. This system was not developed but has been replaced with a fee-for-service procedure to be handled by Customs Accounting Services Division in Indianapolis, IN. Thus, this document announces the fee-for-service report procedure as a modification to the prototype. Customs believes that the announced fee-for-service procedure will be more efficient and provide a better product than in the past. Additionally, Customs will be properly reimbursed for manpower and computer time spent downloading and compiling these reports.

The new fee-for-service flagged entry reports are extensions of two reports Customs already provides: the Masterfile Extract and the Liquidation Extract. The Masterfile Extract reports all open bills and unliquidated formal entries. The Liquidation Extract reports all liquidated entries during a given fiscal year. Under the test, both reports will provide, among other things, dates of entry and entry summary; total duties, taxes, and fees paid on a given entry; whether the entry was flagged for reconciliation; and the particular issue or issues for which the entry was flagged (Value, Classification, 9802, NAFTA or a combination of these). Listed entries which do not reflect any flag data either were never flagged or the flags were already closed out on a previously submitted Reconciliation. Since flagged underlying entry summaries for a certain period may be liquidated or unliquidated, importers are encouraged to request both reports to maintain complete records.

Customs expects to be ready to issue these reports with Reconciliation information in February 2001. The exact date will be announced via an ABI administrative message. In the interim, the Reconciliation team will continue to provide the flagged entry reports upon request. When the fee-for-service report system becomes operational, the free reports currently provided by the Reconciliation team, including the "Heads-Up Report," will cease to be issued.

As stated before, the Masterfile Extract will list all open bills and all unliquidated formal entries, and the Liquidation Extract will list all liquidated entries for a given importer number during a given fiscal year (October 1 – September 30). Under the new procedure, requests for reports must be in writing on company letterhead and

include payment for processing fees. They also must specify the Importer of Record Number (the IRS number).

The fees for Master File Extracts are as follows: $150 for the first importer number; $50 for the second importer number; and $25 for each additional importer number.

The pricing for the Liquidation Extract is separate from the Master File Extract and is as follows: $200 for the first importer number for a given fiscal year, plus $50 for each additional fiscal year requested for that importer number; $100 for the second importer number for a given fiscal year, plus $50 for each additional fiscal year requested for that importer number; and $75 for each additional importer number for a given fiscal year, plus $50 for each additional fiscal year requested relative to those importer numbers.

In addition to requesting reports in letter form, importers can request that Customs furnish a report via computer diskette. If the importer requests that Customs furnish the report on both computer diskette and paper, an additional fee of $50 will be charged. The written request, with payment in the form of a check made payable to the U.S. Customs Service, should be mailed to: U.S. Customs Service, Accounting Services Division, ATTN: Collections Section, 6026 Lakeside Blvd., Indianapolis, IN 46278. Each request requires approximately one week from receipt to process. If further information or assistance is needed to determine charges, please contact Debbie Wolfley at (317) 298-1200, extension 1363.

Modification of the Liquidated Damages Provision

The liquidated damages process for non-filed and late-filed Reconciliation entries was announced in the December 29, 1999, **Federal Register** notice. This document announces a modification of the liquidated damages and mitigation guidelines for non-filed and late-filed Reconciliations.

The guidelines set forth the assessed liquidated damages amounts for each violation type and provide a mitigation amount for each violation, described as the "Option 1" amount. An importer may agree to pay the lower Option 1 amount and waive the right to further mitigate the claim below that amount. There are five types of liquidated damages violations under the prototype guidelines: (1) Reconciliation No File; (2) Reconciliation Money No File; (3) Reconciliation Late File; (4) Reconciliation Money Late File; and (5) Reconciliation Late File With Money No File. The new guidelines set forth their descriptions, assessed liquidated damages amounts, and "Option 1" amounts.

For administrative convenience, Customs has decided to drop the interest calculation (total duties, taxes, fees, and interest, if applicable, due on Reconciliation x number of days late x 0.1%) set forth in the December 29, 1999, **Federal Register** notice as a component of the Option 1 amount. Instead, the Option 1 amount under the new guidelines will be a flat amount ($100 per entry to a maximum of

$500) based on the number of entries filed late. No relief will be afforded until *all* entries identified on a "Notice of Penalty or Liquidated Damages" form (CF-5955A) issued to the importer by Customs are reconciled. These new Option 1 amounts are effective on the date this document is published in the Federal Register. All other aspects of the liquidated damages process announced in the December 29, 1999, notice remain the same.

New Liquidated Damages Guidelines

1. Reconciliation No File

Description: Entry summaries flagged but no Reconciliation filed. Customs will issue a single consolidated liquidated damages claim for all entries fitting this description for a given importer, per month, per surety.

Assessed Liquidated Damages Amount: Total entered value of the underlying entry(ies).

Option 1 Amount: The filing of the Reconciliation entry (or entries) covering the flagged entry summaries listed on the consolidated liquidated damages claim (CF 5955A), with all applicable duties, taxes, fees, and interest owed, will be treated as a petition for relief. Payment of the Option 1 amount will be authorized only upon the proper filing of this Reconciliation, with duties, taxes, fees, and interest. For a consolidated monthly liquidated damages claim covering five or more flagged entry summaries, the Option 1 amount is $500. For consolidated monthly claims involving four or fewer flagged entry summaries, the Option 1 amount is $100 per entry.

2. Reconciliation Money No File

Description: Reconciliation filed timely but without payment of additional duties, taxes, fees, and interest due.

Assessed Liquidated Damages Amount: $1,000 or double the duties, taxes, fees, and interest due on the Reconciliation, whichever is greater.

Option 1 Amount: Payment of the Option 1 amount will be authorized only after all duties, taxes, fees, and interest due are paid. For claims involving five or more flagged entry summaries, the amount is $500. For claims involving four or fewer flagged entry summaries, the amount is $100 per entry.

3. Reconciliation Late File

Description: Reconciliation filed and paid after the 15-month deadline.

Assessed Amount: $1,000 or double the duties, taxes, fees, and interest, if applicable, due on the Reconciliation, whichever is greater.

Option 1 Amount: For claims involving five or more flagged entry summaries, the amount is $500. For claims involving four or fewer flagged entry summaries, the amount is $100 per entry.

4. Reconciliation Money Late File

Description: Reconciliation filed timely but payment of additional duties, taxes, fees, and interest due submitted late.

Assessed Amount: $1,000 or double the duties, taxes, fees, and interest due on the Reconciliation, whichever is greater.

Option 1 Amount: For claims involving five or more flagged entry summaries, the amount is $500. For claims involving four or fewer flagged entry summaries, the amount is $100 per entry.

5. Reconciliation Late File with Money No File

Description: Reconciliation filed late, without payment of duties, taxes, fees, and interest due.

Assessed Amount: $1,000 or double the duties, taxes, fees, and interest due on the Reconciliation, whichever is greater.

Option 1 Amount: Payment of Option 1 amount will be authorized only after duties, taxes, fees, and interest due are paid. For claims involving five or more flagged entry summaries, the amount is $500. For claims involving four or fewer flagged entry summaries, the amount is $100 per entry.

NEW DISKETTE LABELING PROCEDURE

The **Federal Register** notice of February 6, 1998, announced that, along with the ABI-transmitted Header and Association File, importers must submit line item data in both hard copy and commercial spreadsheet format via diskette. All aspects of the test concerning line item spreadsheets remain the same. This document merely addresses the labeling of the diskettes.

Starting on the date this document is published in the **Federal Register**, importers, per the Bureau of the Census, must label diskettes with the following information: Reconciliation entry number, importer of record number (generally the IRS Tax Identification number), and the calendar year or years covered by the Reconciliation spreadsheet contained on that diskette. For example, regarding the latter bit of information pertaining to calendar year, if the Reconciliation covers a fiscal year's worth of entries that were entered from October 1, 1999, through September 30, 2000, the diskette should be labeled "1999–2000," along with the Reconciliation entry number and the IRS number.

CONTINUED USE OF MIDPOINT INTEREST CALCULATION FOR AGGREGATE RECONCILIATIONS

The use of a midpoint interest calculation method was authorized for Aggregate Reconciliations when the Miscellaneous Trade and Technical Corrections Act of 1999 was signed into law on June 25, 1999. The law included a sunset provision of October 1, 2000. Use of midpoint interest calculation under the test was announced in the July 21, 1999, **Federal Register** notice. On November 9, 2000, the Tariff

Suspension and Trade Act of 2000 was signed into law (Pub. L. 106–476; the Act). Under section 1451 of the Act, section 505(c) of the Tariff Act of 1930 (19 U.S.C. 1505(c)), as amended, was amended to remove the sunset provision. Therefore, importers may continue to use the midpoint interest calculation method for Aggregate Reconciliations. Procedures regarding the use of midpoint interest remain the same as described in the July 21, 1999, **Federal Register** notice.

THE ACS RECONCILIATION PROTOTYPE SURVEY

A Reconciliation Prototype survey was published on the Customs web site in order to solicit comments and suggestions from various entities of the trade community (*see also* **Federal Register** (65 FR 36505) notice published on June 8, 2000. The number of responses to this voluntary survey was minimal in comparison to the volume of importers approved for Reconciliation. A summary of the survey responses will be compiled and published on the Customs web site in the near future.

Dated: January 31, 2001.

BONNI G. TISCHLER,
Assistant Commissioner,
Office of Field Operations.

[Published in the **Federal Register**, March 13, 2001 (66 FR 14619)]

U.S. Customs Service

March 7, 2001

Department of the Treasury
Office of the Commissioner of Customs
Washington, D.C.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

U.S. Customs Service

General Notices

PROPOSED REVOCATION OF CUSTOMS RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF A COLLAPSIBLE AUTOMOTIVE ROOFTOP LUGGAGE CARRIER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of an automotive rooftop luggage carrier.

SUMMARY: Pursuant to Section 625 (c), Tariff Act of 1930, as amended, (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a collapsible automotive rooftop luggage carrier. Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before April 30, 2001.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Mary Beth Goodman, Textile Branch, (202) 927-1368.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These con-

cepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the classification of a automotive rooftop luggage carrier from China or Taiwan. Although in this notice Customs is specifically referring to one ruling, New York (NY) A80249, this notice covers any rulings on this merchandise, which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice, memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice and comment period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision of this notice.

In NY A80249, dated March 1, 1996, concerning the tariff classification of a collapsible automotive rooftop luggage carrier constructed of 1000 denier nylon, woven mesh and laminated to polyvinyl chloride material, the product was erroneously classified under subheading 8708.99.8080 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) as an automotive accessory. The item under

review is not a part or accessory of an automobile and is excluded from classification as such by General Note III to Section XVII of the Explanatory Notes to the HTSUSA. The subject merchandise fits within the exemplars of heading 4202 as the luggage carrier which organizes, stores, protects and carries various items, and therefore classification in subheading 8708.99.8080, HTSUSA, is inappropriate. NY A80249 is set forth as "Attachment A" to this document. The correct classification for the product should be under subheading 4202.92.9026 of the HTSUSA as an other container with an outer surface of plastic sheeting or of textile materials.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY A80249, and any other ruling not specifically identified on identical or substantially similar merchandise to reflect the proper classification within the HTSUSA pursuant to the analysis set forth in Proposed Headquarters Ruling (HQ) 964859 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: February 28, 2001.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

March 1, 1996
CLA-2-87:RR:NC:MA:101 A80249
Category: Classification
Tariff No. 8708.99.8080

MS. LAURA DENNY
CBT INTERNATIONAL, INC.
110 West Ocean Blvd.
Suite 1003
Long Beach, CA 90802

Re: The tariff classification of an Add-A-Rack from China or Taiwan.

DEAR MS. DENNY:

In your letter dated February 6, 1996, you requested a tariff classification ruling.

The item is described as an "Add-A-Rack." It is a large, flexible container which is designed to fit on the luggage rack of an automotive vehicle. It is intended to

protect excess luggage. It is constructed of 1000 denier nylon, woven mesh, laminated to P.V.C. It is waterproof and contains nylon straps which secure the luggage to the car rack. It can be easily rolled up and stored for convenience. It measures 63" X 67". You claim that because of its size and bulk, the Add-A-Rack can be used only with a car roof rack.

You have provided a sample, and it is obvious from the size and weight of the item that it cannot be used as a personal item to carry goods.The applicable subheading for the "Add-A-Rack" will be 8708.99.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for other parts and accessories of the vehicles of Chapter 87...other: other. The rate of duty will be 2.9 percent *ad valorem*.

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212-466-5667.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

CLA-2 RR:CR:TE 964859 mbg
Category: Classification
Tariff No. 4202.92.9026

MS. LAURA DENNY
CBT INTERNATIONAL, INC.
110 West Ocean Blvd.
Suite 1003
Long Beach, CA 90802

Re: Classification of an "Add-A-Rack" from China or Twain; Reconsideration of NY A80249.

DEAR MS. DENNY:

On March 1, 1996, Customs issued New York Ruling Letter ("NY") NY A80249 to your company regarding the tariff classification of merchandise described as an "Add-A-Rack" which was originally classified as an auto accessory under heading 8708 of the Harmonized Tariff Schedule Annotated ("HTSUSA"). Upon review, Customs has determined that the subject merchandise was erroneously classified. The correct classification for the product should be under heading 4202, HTSUSA, as a rooftop storage container. NY A80249 is hereby revoked for the reasons set forth below.

Facts:

The "Add-A-Rack" is designed to carry cargo on the roof rack of an automobile. It is a large, flexible container which is designed to fit directly onto the luggage rack of an automobile. It is constructed of 1000 denier nylon, woven mesh, laminated to polyvinyl chloride. The merchandise is waterproof and contains nylon straps which secure the luggage to the car rack. The Add-A-Rack, which measures 63" by 67", can easily be rolled up and stored for convenience.

Issue:

What is the proper classification of the rooftop cargo carrier under the HTSUSA?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

There are two competing headings under the HTSUSA which must be considered for classification of the merchandise under consideration: heading 8708 provides for parts and accessories of motor vehicles; and heading 4202 provides for *inter alia* trunks and similar containers.

The subject merchandise was originally classified in subheading 8708.99.8080, HTSUSA. Merchandise *eo nomine* provided for within heading 8708 includes auto parts and accessories such as *inter alia* safety seat belts, steering wheels, exhaust pipes, gear boxes, axles, shock absorbers, etcetera.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. While not legally binding, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of the Customs Service to consider, whenever possible, the terms of the EN when interpreting the HTSUSA.

General Note III to Section XVII of the Explanatory Notes to the HTSUSA provides:

> It should, however, be noted that these headings [of Section XVII] apply only to those parts or accessories which comply with all three of the following conditions :
>
> (a)They must not be excluded by the terms of Note 2 to this Section (*see* paragraph (A) below).
>
> and (b)They must be suitable for use solely or principally with the articles of Chapters 86 to 88 (*see* paragraph (B) below).
>
> and (c)They **must not be more specifically included elsewhere in the Nomenclature** (*see* paragraph (C) below).

(emphasis added.) Paragraph C to this General Section Note further states:

> Parts and accessories, even if identifiable as for the articles of this Section, **are excluded if they are covered more specifically by another heading elsewhere in the Nomenclature, *e.g.*:**
>
> * * *
>
> (4)Tool bags of leather or of composition leather, of vulcanised fibre, etc. (heading 42.02).

(emphasis added.)

In comparison, heading 4202, HTSUSA, provides for "Trunks, suitcases, vanity-cases, executive-cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, toilet bags, rucksacks, handbags, shopping-bags, wallets, purses, map-cases, cigarette-cases, tobacco-pouches, tool bags, sports bags, bottle-cases, jewellery [sic] boxes, powder-boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanised fibre [sic] or of paperboard, or wholly or mainly covered with such materials or with paper."

Thus, this heading encompasses the articles enumerated, as well as containers similar to these articles.

The EN to heading 4202, HTSUSA, state, in pertinent part:

> This heading covers **only** the articles specifically named therein and similar containers. These containers may be rigid or with a rigid foundation, or soft and without foundation.

The Court of International Trade considered a similar classification dispute involving a trunk organizer and whether such merchandise was properly classified in heading 4202, HTSUS, or heading 8708, HTSUS. In *Totes, Inc. v. United States*, 18 C.I.T. 919, 865 F. Supp. 867 (1994), the court stated:

> [T]he express exclusion from parts and accessories of motor vehicles of articles covered more specifically by another heading elsewhere in the Nomenclature, *e.g.,* tool bags, *see* General Headnote 111(c), Section XVII of the Explanatory Notes to HTS, demonstrates intent to also exclude from parts and accessories of motor vehicles containers similar to tool bags. Such intent is buttressed by prefacing the excluded list of articles (which includes tool bags), with *e.g.,* which means that tool bags are listed as only an example of the type of container that might be used in connection with a motor vehicle that must be regarded as more specifically provided for under Heading 4202. A fortiori, containers similar to tool bags are intended to be excluded from parts and accessories covered more specifically in the Nomenclature.

Totes, at 928.

Also of relevance to the subject merchandise, the *Totes* court further concluded that the "essential characteristics and purpose of Heading 4202 exemplars are. . . to organize, store, protect and carry various items." *Id.* at 872. The C.I.T. further ruled that by virtue of *ejusdem generis* the residual provision for "similar containers" in heading 4202, HTSUS, is to be broadly construed. Heading 4202, HTSUS, in general, provides for containers used to convey personal articles; these "containers" can be anything designed to transport the assorted personal belongings of an individual. *Id.*

In applying the rule of *ejusdem generis* to determine whether an item is embraced within a particular class, the courts have looked to the articles enumerated within that class to ascertain the characteristics they have in common. *Kotake Co., Ltd. v. United States*, 58 Cust. Ct. 196, C.D. 2934 (1967). The subject merchandise is designed and used to provide storage, protection, organization and portability. The Add-A-Rack cargo carrier functions as a container which is placed on top of an automobile for added storage while traveling. The Add-A-Rack cargo carrier is PVC backed for weather resistance and the overall shape serves to provide protection to the items stored within. It is more specifically classified in heading 4202, HTSUS, than in a less specific provision for automotive parts and accessories.

Application of *Totes* and the EN for heading 4202 to the subject merchandise supports the classification therein. Furthermore, predicated on *ejusdem generis*, Customs finds that the cargo carrier is more specifically classifiable under the provisions for the bags, cases and similar containers in Heading 4202 even if they are principally used as motor vehicle parts or accessories within the purview of Heading 8708. This classification is consistent with previous Customs decisions involving similar merchandise, *see e.g.*, NY A84170, dated June 6, 1996, and NY A83233, dated May 13, 1996.

Holding:

NY A80249, dated March 1, 1996, is hereby revoked.

The Add-A-Rack cargo carrier is properly classified in subheading 4202.92.9026, HTSUSA as "Trunks, suitcases, vanity-cases, executive-cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, toilet bags, rucksacks,

handbags, shopping-bags, wallets, purses, map-cases, cigarette-cases, tobacco-pouches, tool bags, sports bags, bottle-cases, jewellery [sic] boxes, powder-boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanised fibre [sic] or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: Other: Of man-made fibers." The general column one rate of duty is 18.3 percent *ad valorem*. The designated textile restraint number is 670.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF AN UNTHREADED HEX HEAD STEEL CAPSCREW BLANK

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of an unthreaded hex head steel capscrew blank.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of an unthreaded hex head steel capscrew blank, under the Harmonized Tariff Schedule of the United States (HTSUS). Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before April 30, 2001.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 927-2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke Port Decision DD880973, dated December 11, 1992, which pertains to the classification of an unthreaded hex head steel capscrew blank. DD880973 is set forth as "Attachment A" to this document.

Although in this notice Customs is specifically referring to one ruling, DD880973, this notice covers any rulings on this merchandise that may exist but has not been specifically identified. Customs has undertaken reasonable efforts to search existing databases; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, other than the referenced rulings (see above), should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment

previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke DD880973 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 963296 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 1, 2001.

MARVIN AMERNICK
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

December 11, 1992
CLA-2-73:S:N:N1:COS 880973
Category: Classification
Tariff No. 7318.29.0000

RAYMOND HUECKSTAEDT
BIG BOLT CORPORATION
1270 Ardmore Avenue
Itasca, Illinois 60143

Re: The tariff classification of steel capscrew blanks, products of Canada, Taiwan and Korea.

DEAR MR. HUECKSTAEDT:

In your letter dated November 13, 1992, you requested a tariff classification ruling on behalf of your company, the Big Bolt Corporation. A description of the product and samples were provided.

The item under review is an unthreaded, hex head, steel capscrew blank made in either Canada, Taiwan or Korea. It is intended to be threaded in the United States after importation.

The applicable subheading for the steel bolt blank will be 7318.29.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Screws, bolts,...and similar articles, of iron or steel:...non-threaded articles: Other...". The rate of duty will be 5.7 percent *ad valorem*.

Goods classifiable under subheading 7318.29.0000, HTS which have originated in the territory of Canada, will be entitled to a 3.4 percent *ad valorem* rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

WILLIAM D. DIETZE,
District Director.

[ATTACHMENT B]

CLA-2 RR:CR:GC 963296 AML
Category: Classification
Tariff No. 7318.15.8065

RAYMOND HUECKSTAEDT
BIG BOLT CORPORATION
1270 Ardmore Avenue
Itasca, IL 60106

Re: An unthreaded cap screw with a diameter of 6mm or more.

DEAR MR. HUECKSTAEDT:

This is in reference to Port Decision DD880973, issued to Big Bolt Corporation by Customs, Ogdensburg, NY, on December 11, 1992, which classified steel capscrew blanks under subheading 7318.29.00 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for screws, bolts . . . and similar articles, of iron or steel . . . non-threaded articles: other. We have reconsidered DD880973 and now believe that the classification of the steel capscrew blank is incorrect. This letter sets forth the correct classification.

Facts:

The articles were described in DD880973 as follows:

> The item under review is an unthreaded, hex head, steel capscrew blank made in either Canada, Taiwan or Korea. It is intended to be threaded in the United States after importation.

Issue:

Whether the unthreaded, hex head, steel capscrew blanks are classifiable under subheading 7318.29.00, HTSUS, as screws, bolts . . . and similar articles, of iron

or steel . . . non-threaded articles: other; or subheading 7318.15.8065, HTSUS, as an other screw, other, having shanks or threads with a diameter of 6 mm or more?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The HTSUS subheadings under consideration are as follows:

7318 Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:

Threaded articles:

7318.15 Other screws and bolts, whether or not with their nuts or washers:

7318.15.80 Having shanks or threads with a diameter of 6 mm or more

Other:

With hexagonal heads:

7318.15.8065 Other.

* * *

Non-threaded articles:

7318.29.00 Other

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 73.18 provides, in pertinent part, as follows:

> Bolts and nuts (including bolt ends), screw studs and other screws for metal, whether or not threaded or tapped, screws for wood and coach-screws are threaded (in the finished state) and are used to assemble or fasten goods so that they can readily be disassembled without damage.
>
> * * *
>
> Blanks for bolts and untapped nuts are also included in the heading.

"It is well established that an imported article is to be classified according to its condition as imported . . . ." *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). *See also*, *United States v. Citroen*, 223 U.S. 407 (1911).

By application of GRIs 1 and 2(a), the articles are classifiable in heading 7318 as unfinished screws. In order to determine the proper classification at the subheading level, GRI 6 is applied. GRI 6 requires that the GRIs be applied in order to determine classification at the subheading level. At GRI 6, the two 5-digit choices are between threaded and non-threaded articles. Application of GRI 1 at the subheading level allows us to consider GRI 2(a) again.

GRIs 6 and 2(a) provide, in pertinent part, that:

> 2. (a) Any reference in a subheading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article.

The ENs to GRI 2(a) provide, in pertinent part:

> (II) The provisions of this Rule also apply to blanks unless these are specified in a particular (sub)heading. The term "blank" means an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part[.]

The unthreaded, hex head, steel capscrew blanks, upon importation, constitute the essence of capscrews with a diameter of 6 mm or more. Once the articles are threaded following importation, they will be complete and immediately ready for use. The articles are readily recognizable as unthreaded, hex head, steel capscrew blanks, and are sufficiently complete to have the essential character of finished, threaded screws having shanks or threads with a diameter of 6 mm or more. The articles, although "not ready for direct use, [do] hav[e] the approximate shape or outline of the finished article or part, and . . . can only be used, other than in exceptional cases, for completion into the finished article or part." *See* the EN to GRI 2(a), above. The unfinished capscrews are provided for in subheading 7318.15.8065, HTSUS.

Holding:

The articles are classified under subheading 7318.15.8065, HTSUS, as capscrews with a diameter of 6 mm or more.

Effect On Other Rulings:

DD880973 is hereby revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF AN UNTHREADED HEX HEAD STEEL BOLT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of an unthreaded hex head steel bolt.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of an unthreaded hex head steel bolt, under the Harmonized Tariff Schedule of the United States

(HTSUS). Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before April 30, 2001.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 927-2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke Port Decision DD880191, dated November 18, 1992, which pertains to the classification of an unthreaded hex head steel bolt. DD880191 is set forth as "Attachment A" to this document.

Although in this notice Customs is specifically referring to one ruling, DD880191, this notice covers any rulings on this merchandise that may exist but has not been specifically identified. Customs has undertaken reasonable efforts to search existing databases; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memo-

randum or decision or protest review decision) on the merchandise subject to this notice, other than the referenced rulings (see above), should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke DD880191 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 963297 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 1, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

November 18, 1992
CLA-2-73:S:N:NI:CO5
Category: Classification
Tariff No. 7318.29.0000

WILLIAM J. MARSTON
DAVIES, TURNER & CO.
755 North Route 83, Unit 221
Bensenville, IL 60106

Re: The tariff classification of bolt blanks, products of Taiwan.

DEAR MR. MARSTON:

In your letter dated November 6, 1992, you requested a tariff classification ruling on behalf of your client Globe Con International, Inc. A description of the product and samples were provided.

The item under review is an unthreaded, hex head steel bolt blank made in Taiwan. It is intended to be threaded in the United States after importation.

The applicable subheading for the steel bolt blank will be 7318.29.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Screws, bolts,...and similar articles, of iron or steel:...non-threaded articles: Other...". The rate of duty will be 5.7 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

C. LEE NOYES,
(for William D. Dietze,
District Director.)

[ATTACHMENT B]

CLA-2 RR:CR:GC 964297 AML
Category: Classification
Tariff No. 7318.15.2060

WILLIAM J. MARSTON
DAVIES, TURNER & CO.
755 North Route 83, Unit 221
Bensenville, IL 60106

Re: An unthreaded hex head steel bolt.

DEAR MR. MARSTON:

This is in reference to Port Decision DD880191, issued to you on behalf of Globe Con International, by Customs, Ogdensburg, NY, on November 18, 1992, which classified an unthreaded hex head steel bolt under subheading 7318.29.00 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for screws, bolts . . . and similar articles, of iron or steel . . . non-threaded articles: other. We have reconsidered DD880191 and now believe that the classification of the unthreaded hex head steel bolt set forth is incorrect. This letter sets forth the correct classification.

Facts:

The articles were described in DD880191 as follows:

> The item under review is an unthreaded hex head steel bolt blank made in Taiwan. It is intended to be threaded in the United States after importation.

Issue:

Whether the unthreaded hex head steel bolts are classifiable under subheading 7318.29.00, HTSUS, as for screws, bolts . . . and similar articles, of iron or steel . . .

non-threaded articles: other; or subheading 7318.15.20, HTSUS, as a hex head bolt?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The HTSUS subheadings under consideration are as follows:

7318 Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:

Threaded articles:

7318.15 Other screws and bolts, whether or not with their nuts or washers:

7318.15.20 Bolts and bolts and their nuts or washers entered or exported in the same shipment

Having shanks or threads with a diameter of 6 mm or more:

7318.15.20.60 With hexagonal heads.

* * *

Non-threaded articles:

7318.29.00 Other

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 73.18 provides, in pertinent part, as follows:

> Bolts and nuts (including bolt ends), screw studs and other screws for metal, whether or not threaded or tapped, screws for wood and coach-screws are threaded (in the finished state) and are used to assemble or fasten goods so that they can readily be disassembled without damage.
>
> * * *
>
> Blanks for bolts and untapped nuts are also included in the heading.

"It is well established that an imported article is to be classified according to its condition as imported . . . ." *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). *See also, United States v. Citroen*, 223 U.S. 407 (1911).

By application of GRIs 1 and 2(a), the articles are classifiable in heading 7318 as unfinished screws. In order to determine the proper classification at the subheading level, GRI 6 is applied. GRI 6 requires that the GRIs be applied in order to determine classification at the subheading level. At GRI 6, the two 5-digit choices are between threaded and non-threaded articles. Application of GRI 1 at the subheading level allows us to consider GRI 2(a) again.

GRIs 6 and 2(a) provide, in pertinent part, that:

> 2. (a) Any reference in a subheading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or

finished article.

* * *

The ENs to GRI 2(a) provide, in pertinent part:

> (II) The provisions of this Rule also apply to blanks unless these are specified in a particular (sub)heading. The term "blank" means an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part[.]

The unthreaded hex head steel bolts, upon importation, constitute the essence of hex head bolts. Once the articles are threaded following importation, they will be complete and immediately ready for use. The articles are readily recognizable as unthreaded hex head steel bolts, and are sufficiently complete, in their most basic form, to have the essential character of finished hex head steel bolts. The articles, although "not ready for direct use, [do] hav[e] the approximate shape or outline of the finished article or part, and . . . can only be used, other than in exceptional cases, for completion into the finished article or part." *See* the EN to GRI 2(a), above. The unfinished bolts are provided for in subheading 7318.15.2060, HTSUS.

Holding:

The articles are classified under subheading 7318.15.2060, HTSUS, as hex head bolts.

Effect On Other Rulings:

DD880191 is hereby revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

Chief Judge

Gregory W. Carman

Judges

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Decisions of the United States Court of International Trade

(Slip Op. 01–24)

SALANT CORPORATION, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 97–06–00977

[Plaintiff's Rule 60(b) Motion for Relief from Judgment denied.]

(Decided March 1, 2001)

Sandler, Travis & Rosenberg, P.A. (Edward M. Joffe, Beth C. Ring, Gerson M. Joseph) for Plaintiff.

Stuart E. Schiffer, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, (*John J. Mahon*), Civil Division, Department of Justice, Commercial Litigation Branch; *Beth C. Brotman*, Office of Assistant Chief Counsel, United States Customs Service, of counsel, for Defendant.

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION AND BACKGROUND

BARZILAY, *Judge*: This matter is before the court pursuant to *Plaintiff's Rule 60(b) Motion for Relief From Judgment ("Pl.'s R. 60(b) Mot.")*. On January 14, 2000, the court granted Defendant's motion for summary judgment, holding that the fabric waste generated during the process of manufacturing imported shirts did qualify as an "assist" within the plain meaning of the Trade Agreements Act of 1979, 19 U.S.C. §1401a(h)(1)(A) (1994) ("TAA")[1], and thus was appropriately included in the transaction value for appraisement purposes. 24 CIT ___, ___, 86 F. Supp.2d 1301, 1308 (2000) ("Opinion"). Notice of appeal to the

[1] The term "assist" is defined by 19 U.S.C. § 1401a(h)(1)(A) as follows:

The term "assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts and similar items incorporated in the imported merchandise.
(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.
(iii) Merchandise consumed in the production of the imported merchandise.
(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

Court of Appeals for the Federal Circuit was given on March 3, 2000. The Federal Circuit granted Salant's motion to voluntarily dismiss its appeal on August 17, 2000. 2000 WL 1229047 at *1 (Fed. Cir. Aug. 17, 2000)

Salant has moved for relief from that judgment pursuant to R. 60(b) on the grounds that the court reached its decision (1) on the basis of "materially incomplete" evidence as to Congressional intent and (2) without new information that has become available, which was not previously available in "traditional" sources of legislative history. *Pl.'s R. 60(b) Mot.* at 1–2. Plaintiff has petitioned the court for an order vacating the judgment for the purpose of permitting Salant to conduct discovery pertaining to an agreement allegedly entered into during the legislative process leading to the enactment of the TAA between the Joint Industry Group ("JIG") and the United States Customs Service ("Customs"), wherein Customs agreed that waste would not be treated as an assist. Plaintiff also seeks to submit a Motion for Rehearing if said discovery reveals that the court relied on incomplete information in making its decision to designate waste material from shirt manufacturing as an assist. *Id.* at 1.

This action was initiated by Salant in June 1997 and, pursuant to USCIT R. 84, was designated a test case in June 1998.[2] Plaintiff supplies rolls of fabric to manufacturers of men's shirts to implement contracts for the "cut, make, and trim" ("CMT") of the shirts. *See Id.* at 2. Plaintiff challenged the valuation of certain men's shirts by Customs, which included the value of material supplied by Plaintiff but scrapped or wasted during the manufacturing process. Customs determined that this material qualified as an assist. *See* 19 U.S.C. § 1401a(h)(1)(A). From 1984, Customs had held that scrap or waste material from a CMT operation was not considered an assist for valuation purposes. *See* 24 CIT at ___, 86 F. Supp. 2d at 1302. However in 1995, after conducting a rule-making exercise where Customs solicited and received public comment, Customs issued a notice explaining that fabric waste generated in a CMT operation would be considered part of an assist within the terms of the statute as "merchandise consumed in the production of imported merchandise."19 U.S.C. § 1401a(h)(1)(A)(iii); 24 CIT at ___, 86 F. Supp. 2d at 1302.

II. Standard of Review

Under USCIT R. 60(b), the court "may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing under Rule 59(b). . . ." As Plaintiff notes, granting such relief is within the court's discretion. *See Washington Int'l Ins. Co. v.*

[2] The test case procedure allows other importers with similar factual and legal issues pending before the court to suspend such actions until the test case is resolved.

United States, 16 CIT 480, 483, 793 F. Supp. 1091, 1093 (1992) (citing *United States v. Atkinson*, 748 F.2d 659, 660 (Fed. Cir. 1984)).

III. Discussion

A. *The "new information" Plaintiff alleges does not conform to the requirements of R. 60(b).*

USCIT R. 60(b) allows a court to release a party from a final judgment if there is "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing. . . ." It is unclear how the new information Plaintiff alleges was not uncovered well before in the history of this case.

Plaintiff seeks to conduct discovery pertaining to records and documents referenced by "longtime customs practitioner William Outman." *Pl.'s R. 60(b) Mot.* at 3–4. Mr. Outman ("*Affiant*") relayed in his affidavit ("Affidavit") that he was a member of the Steering Committee of the JIG and that he was personally involved in the drafting of the legislation that became the Trade Agreements Act of 1979 and the Tokyo Round of the General Agreement on Tariffs and Trade, including the GATT Valuation Code, which contained the first promulgation of the provision at issue regarding assists.

The timing of the Affiant's contact with Salant (*i.e.* March 2000), Salant's filing of this R. 60(b) motion, and the apparent failure to bring any concerns to the attention of Customs as early as 1995 when Customs first gave notice of a potential rule change are troublesome at best. *See Proposed Modification and Revocation of Customs Ruling Letters Relating to Assists, ("Proposed Modification")* 1995 WL 330886 (Cust. B. and Decis. May 1, 1995). According to Plaintiff, the Affiant first brought this "new" information to Salant's attention in March 2000. *Pl.'s R. 60(b) Mot.* at 2. Such "new" information should have been raised with the court immediately, rather than two months following the decision of the court.

It is also unclear why the potential existence of an agreement between Customs and the JIG regarding the scope of assists did not come to light earlier. *See Affidavit* at 4. In 1995, Customs gave notice of a potential rule change, and initiated a public comment period. *See Proposed Modification* at 1. In the notice, Customs clearly explained that it proposed changing its former policy of excluding scrapped or wasted material from the scope of assists. *Id.* at 2. Upon completion of this public review process, Customs changed its policy and began to treat fabric wastes generated in a cut, make and trim ("CMT") operation as dutiable assists. Customs issued Headquarters Ruling Letters ("HRLs") 543831 and 545909 to revoke earlier rulings. In light of these events, any person or group and the public at large had at least four years' notice that Customs had reconsidered the dutiability of fabric wastes under 19 U.S.C. §1401a(h)(1)(A)(iii). Thus, the court agrees with Defendant that the "suddenly surfacing claims of the possible existence of some 'Agreement' between Customs and the JIG and the

need to vacate Slip Op. 00–05, to secure permission to conduct discovery . . . [are] untimely and facially unmeritorious." *Def.'s Resp. to Pl.'s R. 60(b) Mot. ("Def.'s Resp.")* at 6.

Plaintiff's statement that evidence of an agreement between Customs and the JIG was unavailable because the agreement was reached prior to the bill's introduction and that he bill was considered under "fast track" procedures is unavailing. This assertion reflects a misunderstanding of the fast track process. Prior to consideration of a major trade agreement under fast track procedures, the Administration and Congress engage in significant consultations.[3] These consultations may or may not be memorialized in Congressional hearings and ultimately floor debate, in which participants discuss Congressional understandings of important provisions of a major trade agreement. In this instance, had there been a mutual understanding of the terms of the statute as Plaintiff claims, Customs or the JIG could have asked members of Congress to make a statement regarding the agreement, to memorialize it as part of the legislative history. Thus, Plaintiff's assertion that such legislative history is entirely unavailable is inaccurate.[4]

B. *The Affidavit does not establish the existence of an agreement between Customs and the JIG.*

Plaintiff claims that the *Affidavit* (1) establishes the existence of an agreement between Customs and the JIG that scrap would not be treated as an assist; and (2) supports Salant's argument that the term "merchandise," rather than the term "material" was used in drafting subsection 1401a(h)(i)(A)(iii) to reflect Congressional intent that this provision was not intended to cover waste.

The *Affidavit* fails to convince the court that an agreement existed between Customs and the JIG that waste would not be a dutiable assist. First, in ¶ 4, the *Affidavit* notes that Customs and the JIG agreed to "narrow" the meaning of assist. *Affidavit* at 2. Additionally, in ¶ 5, the *Affidavit* chronicles the "lobbying efforts" of the JIG in drafting the GATT Valuation Code and the TAA, which resulted in inclusion of the word "incorporated" versus the word "used" in the legislation, so that waste would not be construed as an assist. *Id.* at 3. In ¶ 6, the *Affidavit* states that the JIG was concerned about using the word "materials" in section 1401a(h)(i)(A)(iii) because it was duplicative and "did not reflect the realities of what was being 'consumed' in actual production facilities. . . ." *Id.* at 4. According to the *Affidavit*, the JIG successfully convinced the drafters of the TAA to incorporate the term "merchandise" instead of "materials." The *Affidavit* closes

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[3] The statute requires that certain consultation procedures be followed prior to formal congressional consideration of any trade agreement and during negotiations of such trade agreements, to ensure that Congress fulfills its legislative duty to respond to and make recommendations regarding any proposed agreement, possible changes to the law, or changes in administrative practices. *See* 19 U.S.C. §§ 2902(d) [expired], 2903, 2151, 2191 (1994).

[4] The court notes that even if the agreement did exist, its probative value is questionable as to Congressional intent. *See Kuehne & Nagel, Inc. v. United States*, 10 CIT 814, 818 (1986).

with the Affiant's final statement:

> It is my belief that the Customs Service has maintained records and documents in its archives memorializing discussions concerning implementing the legislation and the above-described changes. In addition, the documents and records contained in the archives of the two Congressional Trade sub-committees concerning this legislation should evidence this drafting history.

Id. at 7–8.

Clearly, the *Affidavit* does not address the core issue of Congressional intent regarding 19 U.S.C. § 1401a(h)(i)(A)(iii) and the meaning of the word "merchandise" in this provision as construed by the court in the prior opinion. 24 CIT at ___, 86 F. Supp. 2d at 1305. As Defendant notes in its response, the *Affidavit* states that Customs and the JIG reached agreement on the term "incorporated" in 19 U.S.C. § 1401a(h)(1)(A)(i) to avoid having waste considered an assist, but fails to make a similar definitive statement regarding 19 U.S.C. § 1401a(h)(1)(A)(iii) and the implications of using the word "merchandise" for determining the scope of an assist. *Def.'s Resp.* at 8.

While the *Affidavit* may show that an industry group such as the JIG exerted its influence in drafting the language of the TAA, the *Affidavit* fails to prove the existence of an "agreement" in the course of drafting the relevant statutory language. Plaintiff relies solely on 20-year-old personal recollections of drafting history and the personal belief of one of the participants that proof of such drafting history will be found in the archives of Customs and the Congressional Trade Subcommittees. The court notes with interest Defendant's comment that the *Affidavit* does not mention any drafting records from the JIG's files, despite the Affiant's insistence that the JIG was intimately involved in the drafting process. Furthermore, the court agrees with Defendant that even if these assertions are entirely valid, the *Affidavit* fails to prove that members of Congress were aware of these changes and their meanings. Thus, Plaintiff's claims are insufficient to prove the existence of an agreement and in the context of a Rule 60(b) motion, fail to convince the court of the need to allow Plaintiff to conduct discovery.

IV. Conclusion

The court finds no grounds to reopen its decision in 24 CIT ___, 86 F. Supp.2d 1301. Plaintiff's Rule 60(b) motion fails to convince the court that the *Affidavit* presents "new" evidence of an agreement between Customs and the JIG regarding the dutiability of waste. Thus, there is no new information to prompt the court to allow discovery in this case.

In accordance with the applicable standard of review and for the foregoing reasons, it is hereby

ORDERED that Plaintiff's motion for relief from judgment is denied.

(Slip Op. 01–25)

LEVI STRAUSS & COMPANY, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 93–11–00726

(Dated March 5, 2001)

OPINION AND JUDGMENT

MUSGRAVE, *Judge*: In *Marbury v. Madison*, Chief Justice Marshall stated that "[i]t is *emphatically* the province and duty of the judicial department to say what the law is", 5 U.S. (1 Cranch) 137, 177 (1803) (emphasis added), a position generally accepted by the bar and the judiciary for the past one hundred ninety-eight years. This proposition was significantly limited, if not partially overruled, by the Supreme Court's decision in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), which was recently reaffirmed in *United States v. Haggar Apparel Co.*, 526 U.S. 380 (1999), holding that the law may be – and indeed is mandated to be – the interpretation by the agency administering the particular law or regulation.

In *Chevron*, the Supreme Court directed the judiciary to give deference to an agency's reading of its own regulation.

> "The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, *implicitly or explicitly*, by Congress." *Morton v. Ruiz*, 415 U.S. 199, 231 (1974). If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. Sometimes the legislative delegation to an agency on a particular question is *implicit* rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.

467 U.S. at 843–44 (footnotes omitted) (emphasis added).[1] Thus an agency employee, who may have little or no background in the law, is now both the enforcer *and* interpreter of the law.

This result compromises the long established concept of judicial review. Even in instances where the statute is silent or ambiguous and there has been no explicit legislative delegation from Congress to the agency, courts must still defer to the agency's interpretation. *See*

[1] The Federal Circuit Court of Appeals has further curtailed the authority of this Court in antidumping cases by holding that Commerce is entitled to "tremendous deference . . . in administering the antidumping law", *Melamine Chemicals, Inc. v. United States*, 732 F.2d 924, 930 (Fed. Cir. 1984) (Markey, C.J.) (quoting *Smith-Corona Group v. United States*, 713 F.2d 1568, 1582 (Fed. Cir. 1983)), and further that "the International Trade Administration is the 'master' of the antidumping laws", *Fujitsu General Ltd. v. United States*, 88 F.3d 1034, 1038 (Fed. Cir. 1996) (quoting *Torrington Co. v. United States*, 68 F.3d 1347, 1351 (Fed. Cir. 1995)).

Chevron, 467 U.S. at 843–44, quoted *supra*. At best, this mandate supplants the opinion a member of the federal judiciary, appointed by the President with the advice and consent of the Senate, with that of an executive branch employee; at worst, it amounts, in essence, to the delegation of the authority of the judicial branch to the executive branch. Article III, Section 1 of the Constitution provides that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." To the extent that judicial power entails the power to "say what the law is", *Chevron* and its progeny erode this clause.

While the complexion of American society has changed dramatically since 1787, it nonetheless boggles the rational thought process to imagine that the Framers could possibly have contemplated empowering vast agencies with authority to *interpret* the very laws which they administer. Citizens and corporate entities are now at the mercy of federal regulators, who are by nature and purpose often adversaries of those whom they regulate. To say that judicial review of administrative decisions is alive and well is to deny reality. In practice the opinions and orders of administrators and their subalterns are almost always final.

Irrespective of the foregoing, this Court is constrained to follow the precedent of the Supreme Court and the Court of Appeals for the Federal Circuit. In *Levi Strauss & Co. v. United States*, 21 CIT 677, 969 F. Supp. 75 (1997) this Court entered judgment for the plaintiff, holding that the merchandise at issue was properly classified under HTSUS 9802.00.80. *See* 21 CIT at 685, 969 F. Supp. at 82. That decision was affirmed by the Court of Appeals for the Federal Circuit. *See Levi Strauss & Co. v. United States*, 156 F.3d 1345, 1350–51 (Fed. Cir. 1998). Subsequently the Supreme Court vacated and remanded the Federal Circuit's decision. *See United States v. Levi Strauss & Co.*, 527 U.S. 1001 (2000). On remand, the Federal Circuit held that

> Customs' determination that the articles do not qualify for the partial exemption from duty allowed by HTSUS 9802.00.80 must be sustained. The Court of International Trade's judgment to the contrary is accordingly reversed, and we remand the case with instructions to enter judgment in favor of the United States.

Levi Strauss & Co. v. United States, 222 F.3d 1344, 1347 (Fed. Cir. 2000). Accordingly, it is hereby

ORDERED that the Court's prior entry of judgment in favor of Levi Strauss & Co. is withdrawn, and it is further

ORDERED that the United States Customs Service's determination that the apparel at issue does not qualify for the partial exception from duty allowed by HTSUS 9802.00.80 is sustained.

(Slip Op. 01–26)

HAGGAR APPAREL COMPANY, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 93–06–00343

(Dated March 5, 2001)

JUDGMENT

MUSGRAVE, *Judge*: In *Haggar Apparel Co. v. United States*, 20 CIT 842, 938 F. Supp. 868 (1996) (DiCarlo, C.J.), the court entered judgment for the plaintiff, holding that it was entitled to a duty allowance on the subject merchandise under TSUS 807.00 and HTSUS 9802.00.80. *See* 20 CIT at 851, 938 F. Supp. at 875. That decision was affirmed by the Court of Appeals for the Federal Circuit. *See Haggar Apparel Co. v. United States*, 127 F.3d 1460, 1462 (Fed. Cir. 1997). Subsequently the Supreme Court vacated and remanded the Federal Circuit's decision. *See United States v. Haggar Apparel Co.*, 526 U.S. 380, 395 (2000). On remand, the Federal Circuit held that

> Customs' determination that the pants at issue do not qualify for the partial exception from duty allowed by HTSUS 9802.00.80 (and, in prior years, TSUS 807.00) must be sustained. The Court of International Trade's judgment to the contrary is accordingly reversed, and the case is remanded with instructions to enter judgment in favor of the United States.

Haggar Apparel Co. v. United States, 222 F.3d 1337, 1343–44 (Fed. Cir. 2000). Accordingly, it is hereby

ORDERED that the court's prior entry of judgment in favor of Haggar Apparel Company is withdrawn, and it is further

ORDERED that the United States Customs Service's determination that the apparel at issue does not qualify for the partial exception from duty allowed by TSUS 807.00 and HTSUS 9802.00.80 is sustained.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C01/1 1/5/01 Aquilino, J.	Ades Imports, Inc.	97–11–01975	3926.40.00 or 6702.90.35 5.3% or 9%	9505.10.25 Free of duty	Agreed statement of facts	New York Christmas articles
C01/2 1/5/01 Aquilino, J.	Asics Tiger Corp.	98–1–00136	6404.10.20 10.5%	6403.99.90 10%	Agreed statement of facts	Long Beach Footwear
C01/3 1/9/01 Goldberg, J.	Target Stores	95–4–00376	6402.99.30 37.5%	6402.99.15 6%	Target Stores *v.* U.S., Slip Op. 00–111	Los Angeles Sandals
C01/4 1/17/01 Tsoucalas, J.	Hewlett-Packard Co.	97–4–00566	9017.20.90 5.3%	8471.60.64 Free of duty	Agreed statement of facts	San Francisco Various models of Hewlett-Packard Design Jet and InkJect plotters and printers
C01/5 1/19/01 Aquilino, J.	Hewlett-Packard Co.	99–6–00386	9017.20.90 5.3%	8471.60.64 Free of duty	Agreed statement of facts	Los Angeles Hewlett Packard DesignJet 350C printer units
C01/6 1/22/01 Tsoucalas, J.	175325 Canada	93–3–00168	CA9017.20.80 CFTA duty rate 4%	9006.10.00 3% or at the CFTA rate of 2.1% (for FIRE 1000 photoplotters) 9006.59.40 4% or at the CFTA rate of 3.2% (for FIRE 240, FIRE 9350, and FIRE 9650 photoplotters)	Agreed statement of facts	Blaine, WA Photoplotters

ABSTRACTED CLASSIFICATION DECISIONS—CONTINUED

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C01/7 1/22/01 Tsoucalas, J.	Cymbolic Sciences, Ltd.	93–3–00169	CA9017.20.80 CFTA duty rate of 3.4% or 4%	9006.10.00 3% or at the CFTA rate of 2.4% (for FIRE 1000 photoplotters) 9006.59.40 4% or at the CFTA rate of 3.2% (for FIRE 9050, FIRE 9150, FIRE 9250, FIRE 9350 and FIRE FIRE 9650 photoplotters	Agreed statement of facts	Blaine, WA Photoplotters
C01/8 1/22/01 Aquilino, J.	San Remo Int'l Trading	98–3–00652	2002.10.00 and assessed duties at 100% pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3% 7.1% and 7%	Agreed statement of facts	New York Canned tomato sauce
C01/9 1/31/01 Aquilino, J.	Mita Copystar America	00–01–00044	3707.90.30 or 3707.90.32 8.5%, 8.1%, 7.7% 7.3% or 6.9%	9009.90.00 or 9009.90.50/80 Free of duty or 3.9%	Agreed statement of facts	New York Laredo Chicago Dallas Photocopier toner cartridges
C01/10 1/31/01 Aquilino, J.	Duferco Steel, Inc.	00–07–00330	7224.90.0055 2.6%	7207.12.0050 except for 159 steel slabs that contain boron as an alloying element in excess of 0.0008% (by weight) will remain classified under 7224.90.0055	Agreed statement of facts	Philadelphia 2606 steel slabs from Russia

C01/11 2/8/01 Wallach, J.	GLI Int'l, Inc.	99–11–00698	9027.10.20 3% or 2.3% 9027.90.58 as parts and accessories 9027.10.20 3% or 2.3%	9027.80.45 Free of duty 9027.90.54 Free of duty	Agreed statement of facts	Not stated Oxygen meters
C01/12 2/20/01 Wallach, J.	Joel USA, Inc.	99–10–00639	9012.10.00 Not stated and assessed merchandise processing *ad valorem* provided for in Section 23.23 of 19 CFR 24.23	9817.00.96 Duty free and exempt from assessment of merchandise processing *ad volorem* fee	Agreed statement of facts	Los Angeles JEM–2010 Electron Microscopes
C01/13 2/21/01 Wallach, J.	Hi-Tec Sports	98–1–00055	6404.19.15 10.5%	6403.91.60 8.5%	Agreed statement of facts	Long Beach Kona style hiking boot
C01/14 3/1/01 Aquilino, J.	Alcan Aluminum Corp.	94–9–00539	7601.20.90 and not entitled to preferential treatment under the U.S.-Canada Free Trade Agreement Merchandise free of duty and merchandise processing fee (MPF) calculated pursuant to 19 U.S.C. 58c (a) 9(A) and 9 (B)	CA7601.20.90 Free of duty at the lower MPF based on the year of entry, for merchandise originating in Canada, as set out in 19 U.S.C. 58c(b) (10) and Article 403 of the U.S. Canada Free Trade Agreement	Agreed statement of facts	Detroit Aluminum in various forms and shapes

ABSTRACTED VALUATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	VALUATION	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
V01/1 2/15/01 Pogue, J.	Rainbow Rugs, Inc.	95-11-01521	Section 402(f) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, at invoice prices, U.S. funds, plus 16.55% mark-up, packed	Invoice prices, U.S. funds, plus 4.8% mark-up, packed	Agreed statement of facts	Portland Finished and unfinished carpets

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